



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES Division of Water Rights

MICHAEL R. STYLER
Executive Director

KENT L. JONES
State Engineer/Division Director

Mill Creek

BEFORE THE DIVISION OF WATER RIGHTS

In The Matter Of:

**Moab Irrigation Co.
PO Box 385
Moab, UT 84532**

RESPONDENT

MEASURING DEVICE NOTICE

SEAA No. 1304
DISTRIBUTION ACCOUNT: 101431
WATER RIGHTS: 05-2013, 05-2828, 05-
2839, 05-2888, 05-2896, 05-2987, 05-1068 &
05-2712

TO: The Moab Irrigation Co.:

I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:

- (a) each location where water is diverted from a source; and*
- (b) any other location required by the state engineer.*

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

- (a) the measuring device...*

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

- (a) forbid the use of water until the user complies with the state engineer's requirement; and*
- (b) commence enforcement proceedings authorized by Section 73-2-25.*

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II. STATEMENT OF FACTS

1. The Respondent diverts water from the Mill Creek and tributary drainages under the above-listed water rights at the following locations:
 - MIC diversion 1 - pipeline 3 & 4 located at a point South 864.91 feet and East 1279.10 feet from the N4 corner of section 07, township 26S range 22E, SL b&m.
 - MIC diversion 2 - pipeline 2 located at a point South 930.53 feet and East 1256.14 feet from the N4 corner of section 07, township 26S range 22E, SL b&m.
 - MIC diversion 5 - pipeline 5 located at a point South 678.31 feet and East 1033.04 feet from the NW corner of section 08, township 26S range 22E, SL b&m.
2. Accurate and equitable distribution of the water from the Mill Creek requires that the respondent's diversions into pipelines 1, 2 and 5 be equipped with functional and accurate measuring devices. Commissioner Robert Magleby's 2008 irrigation season records indicate that the meters currently installed functioned with the frequency shown in the table below.

| Meter | Days Meter Was Broken | Days Meter Functional |
|-------------------------------------|-----------------------|-----------------------|
| MIC diversion 1 - pipeline 3 & 4 | 42 | 185 |
| MIC diversion 2 - pipeline 2 | 54 | 170 |
| MIC diversion 5 - pipeline 5 | 61 | 94 |

III. ACTIONS REQUIRED

Install Accurate Measurement Devices to measure:

1. Flows diverted into MIC diversion 1 pipelines 3 & 4
2. Flows diverted into MIC diversion 2 pipeline 2
3. Flows diverted into MIC diversion 5 pipeline 5

The Division understands that in-line meters have been installed in each of these locations and that they have frequently been out of service. It is the opinion of the Division that in-line meters are not appropriate meters for any of the above-listed diversion due to the excessive amounts of dirt and debris in the water. **The Moab Irrigation Co. shall provide and install accurate external measurement devices appropriate for the large amount of dirt and debris present at each of the above-listed diversions. Devices shall be installed and maintained such that they remain operable no later than May 15, 2009. Prior to**

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commencing the required work the Respondent shall consult with the Division to assure that the planned measuring device will satisfy the requirements of this Order.

IV. ADDITIONAL AGENCY ACTION

The Respondent is encouraged to diligently attend to the work required by this Order. If the required measurement devices are not satisfactorily installed and rendered operational by April 15, 2009, the Division may issue an Order forbidding the use of water until the Respondent has complied. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008). If determined to be in violation an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation.

The orderly distribution of water from the Mill Creek in accordance with existing water rights is a concern to Division as well as to the Moab Irrigation Co. To that end we appreciate and thank you for your cooperation. If you have any questions concerning this Order please contact Marc Stilson, Southeast Regional Engineer at (435) 613-3750 or Sue Odekirk, Distribution Engineer at (801) 538-7431.

Dated this 11th day of March, 2009

A handwritten signature in cursive script that reads "Sue Odekirk".

Sue Odekirk, P.E.
Distribution Engineer

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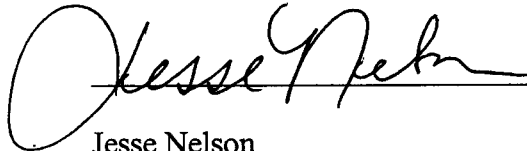
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CERTIFICATE OF MAILING

I, the undersigned, certify that on this 11th day of March, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

**Moab Irrigation Co.
PO Box 385
Moab, UT 84532**

A handwritten signature in cursive script, reading "Jesse Nelson", is written over a horizontal line.

Jesse Nelson
Division of Water Rights
Field Services Secretary

JN

cc: Marc Stilson

Mark Sovine, Grand County Water Conservancy District

File